

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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To: County Assessors

From: Heather Scheel
General Counsel

Date: April 2004

Re: New Exemption Procedures

This memorandum is written in an effort to remind county assessors of new statutory changes that were enacted last year by the Indiana General Assembly affecting taxpayers that seek exempt property tax status and the offices that review the applications. Attached to this memorandum are instructions for assessors to use when reviewing exemption applications. These instructions resemble the General Information Sheet, state form SP 198, currently governing the procedures of filing for a property tax exemption, but have been tailored for assessor use.

As a reminder, HEA 2005-2003 provides new procedures and requirements in the determinations of exemptions, beginning in 2004. In brief, the new law:

- Eliminates most acreage limitations in the determination of land exemptions.
- Provides that land is exempt under certain circumstances for the retention and preservation of land and water (maximum of 500 acres) or if it is used for parking that serves an exempt building.
- For exemption of land purchased for construction of a building to be used for exempt purposes, requires active pursuit of the building plan.
- Requires identification in an exemption application of the use of each part of the property, and applies the predominant use test separately to each part identified.
- Establishes a procedure to require that property for which an exemption application is filed is properly assessed.
- Requires the reporting of leases of exempt real property to certain entities.
- Withholds part of state property tax replacement fund distributions to a county if the county assessor fails to forward approved exemption applications to the DLGF.

Many counties may already be receiving applications from entities claiming exempt status for 2004. The new statute, however, requires that if certain information has not been provided pursuant to these new provisions, the assessor must take the necessary steps to acquire the data prior to forwarding any PTABOA determinations to the Department.

Thank you for your cooperation in this matter.

GENERAL INFORMATION REGARDING STATE FORM 136 APPLICATION FOR PROPERTY TAX EXEMPTION

WHY MUST A TAXPAYER FILE FOR AN EXEMPTION

An exemption is a privilege that may be waived. If a taxpayer does not timely comply with the proper procedures for obtaining exempt status, the exemption is waived and the taxpayer is subject to taxation. *IC 6-1.1-11-1.*

Only property that is owned, used and occupied for an exempt purpose may be granted an exemption. If the taxpayer fails to state either the specific statutory provision authorizing the exemption or a specific exempt purpose as described under general provisions of the law, the assessor may deny the exemption application.

WHAT PROPERTY MAY BE GRANTED AN EXEMPTION

Property may be granted an exemption if an application has been timely filed, and the property qualifies for the specific exemption sought under law. Generally speaking, all or part of a building is exempt from property taxation if it is owned, used and occupied by a person for educational, literary, scientific, religious or charitable purposes *IC 6-1.1-10-16*. There are also numerous provisions throughout the Indiana Code that specifically identify property that qualifies for exempt status.

Case law also provides for different entities to satisfy the three requirements. *Sangrilea Boys Fund, Inc. v. SBTC*, 711 N.E.2d 875 (Ind. Tax 1999). In other words, one non-profit entity owns the property, but another uses and occupies it for an exempt purpose. Still, the entire property is exempt.

IC 6-1.1-1-10 defines person to include a sole proprietorship, partnership, corporation, limited liability company, fiduciary, or individual.

Property must be predominately used or occupied for one or more stated purpose in order to receive exempt status. Property is predominately used or occupied for an exempt purpose if it is used or occupied more than fifty percent (50%) of the time for a purpose that qualifies as exempt.

Property that is exclusively used for a stated purpose may have a carved out statutory provision allowing taxpayers to seek exempt status. Some examples include public library property, *IC 6-1.1-10-19*, Y.M.C.A. or youth organizations under *IC 6-1.1-10-25* and agricultural association under *IC 6-1.1-10-26*. Many exemption provisions are located in other Indiana Code titles. *IC 6-1.1-10-38* does list a number of these titles and should always be consulted when determining the purpose.

Application of the exemption applies separately to each part of the property used and occupied and each part of the property not used or occupied for one or more exempt purposes. Below are some examples of the different types of property:

1. Property that is exclusively used or occupied for one or more of the stated purposes is fully exempt (100%) from taxation.

2. Property that is predominately used or occupied for one or more of the stated purposes by a church, religious society, or a not-for-profit school is totally exempt (100%) from taxation.
3. Property used for purposes other than those listed in (2) that is used and occupied for an exempt purpose more than 50 percent of the time is exempt from property tax on pro rata basis. Thus, that property is exempt to the extent it was used or occupied for one or more of the stated purposes. Thus, charitable organizations may be entitled to partial exempt-status based on the amount of time the property serves the stated charitable purpose.

In conjunction with predominate use the assessor must also evaluate the substantial relationship related to a property's exempt purpose. An exemption should not be granted if the property used by the exempt organization is not substantially related to the exempt purpose. *IC 6-1.1-10-36.5*. The Department will be issuing additional guidance in rule form to assist with this evaluation.

WHERE MUST A TAXPAYER FILE

Taxpayers seeking exempt status must timely file an application for property tax exemption with the county assessor in the county the property is located. Form 136 Application for Property Tax Exemption ("Application") is the state form prescribed by the Department.

WHEN MUST A TAXPAYER FILE

Any owner of tangible property that wishes to obtain exempt status must file in duplicate an application on or before May 15. The application applies for a single year unless the taxpayer falls under the exception provisions in *IC 6-1.1-11-1*, *IC 6-1.1-11-3.5* and *IC 6-1.1-11-4*.

A not-for-profit seeking an exemption under *IC 6-1.1-10* must file an application in all even numbered years. If a corporation filed in 2002, they must re-file in 2004. Anytime a taxpayer becomes ineligible for the exemption they shall notify the county assessor on or before May 15. *IC 6-1.1-11-3.5*. Some counties merely require the taxpayer to supply a "statement" every two years indicating that the use and occupancy has remained the same. If that is the case in your county, before forwarding an approved "statement" to the state, the Department asked that you also attach the original documentation that you based your initial approval on as well.

Certain property is not required to file an application before receiving a property tax exemption. Real property owned, used and occupied by the United States, the state, an agency of this state or a political subdivision *IC 6-1.1-11-9*; cemetery property described by *IC 6-1.1-2-7* or *IC 23-14-68* and property owned by the Bureau of Motor Vehicles under *IC 9-15-1* need not file an application to receive exempt status. Property owned by the government of the United States, this state, an agency of this state, or a political subdivision of this state shall not be assessed. All other property must be assessed according to the applicable laws, rules and guidelines of this state. Pursuant to the new law enacted in 2003, the Department is to report to the General Assembly whether counties are assessing exempt property.

If a religious institution receives exempt status under *IC 6-1.1-10-21* or the property is owned by a church or religious society for educational purposes under *IC 6-1.1-10-16*, they need not re-file an application every two years as long as the property continues to be used for the purpose the exempt status was granted. A new application must be filed, however, if title to the property changes or the property is used for a nonexempt purpose after the date of the filing. *IC 6-1.1-11-4*. All assessors need to remind religious societies that they must file at least one application before they can receive their exempt status.

WHAT MUST THE TAXPAYER FILE

The taxpayer seeking exempt status must file an application. There is no fee associated with filing the application. The application must contain the following information under *IC 6-1.1-11-3*:

1. A description of the property claimed to be exempt.
2. A statement showing the ownership, possession, and use of the property.
3. The grounds for claiming the exemption -- **Including the statutory code provision allowing the taxpayer to seek exempt status.**
4. Full name and address of the applicant. Assessor should also determine where proper notices should be sent if different from applicant/owner.
5. **For the year that ends on the assessment date of the property, identification of:**
 - (A) **each part of the property used or occupied; and**
 - (B) **each part of the property not used or occupied; for one or more exempt purposes under IC 6-1.1-10 during the time the property is used or occupied.**
6. **A copy of a current property record card that shows the assessed value for the assessment date the exemption is sought.**

Sections 5 & 6 are newly enacted provision. Proper use identification will be important when determining the percentage for which a charitable organization may be eligible when seeking exempt status. If it is not clear on the application what percentage the taxpayer is seeking, the Department suggests that the county make an additional document request prior to making a determination.

Another new provision was enacted during 2003. *IC 6-1.1-11-3.8*.

IC 6-1.1-11-3.8 Notice to county assessor of lease of certain property; county assessor notice to department of local government finance; department rules.

Sec. 3.8. (a) This section applies to real property that after December 31, 2003, is:

- (1) exempt from property taxes:
 - (A) under an application filed under this chapter; or
 - (B) under:
 - (i) IC 6-1.1-10-2; or
 - (ii) IC 6-1.1-10-4; and
- (2) leased to an entity other than:
 - (A) a nonprofit entity;
 - (B) a governmental entity; or
 - (C) an individual who leases a dwelling unit in:

- (i) a public housing project;
- (ii) a nursing facility referred to in IC 12-15-14;
- (iii) an assisted living facility; or
- (iv) an affordable housing development.

(b) After December 31, 2003, each lessor of real property shall notify the county assessor of the county in which the real property is located in writing of:

- (1) the existence of the lease referred to in subsection (a)(2);
- (2) the term of that lease; and
- (3) the name and address of the lessee.

(c) Each county assessor shall annually notify the department of local government finance in writing of the information received by the county assessor under subsection (b).

(d) The department of local government finance shall adopt rules to:

- (1) establish when the notices under subsections (b) and (c) must be given; and
- (2) otherwise implement this section.

As added by P.L.264-2003, SEC.6.

Currently the application does not require the taxpayer to provide leasing information. Changing the forms will take several months and rulemaking often takes several more months. Consequently, the Department requests that counties require that applicants provide this information in conjunction with re-applications before making a determination on the application and submitting the information to the Department. The Department will establish a date for the county assessor to provide the proper data in the near future.

Leasing information must also be captured for state-owned property as well as political subdivisions as defined by 6-1.1-10-4.

Because this information has not always been a requirement, the Department suggests that county assessors seek in-input from county councils, county commissioners and county auditors on how to best collect the type of data the general assembly would like the Department to review. This data will need to be provided to the Department in addition to the approved exemption applications. While the code requires the information to be provided in writing, the Department encourages all counties to maintain an electronic spreadsheet of this data.

WHAT SHOULD HAPPEN AFTER THE TAXPAYER FILES AN APPLICATION

Before a county assessor accepts an application, they should make sure that the taxpayer has at least identified a statute under which the exemption is sought as well as make sure a current copy of the property record card ("PRC") is attached. If the applicant fails to file a PRC, the assessor shall allow the taxpayer an additional thirty (30) days to provide one. If the applicant fails to provide a current copy, the county PTABOA may deny the application.

A timely filed application will be reviewed by the county PTABOA. Before the Board convenes, the county assessor shall provide a copy of the exemption applications to all board members for review. The PTABOA will approve or deny each application for property tax exemption filed. If the application is

denied, the county assessor shall notify the applicant by mail using state Form 120. If the application is untimely filed, the Department suggests that a denial be issued at the assessor's earliest convenience to assure the taxpayer has ample opportunity to re-file by May 15 the following year. Each denial should include appeal rights to the Indiana Board of Tax Review.

If the application is approved in whole or in part, the assessor shall notify the county auditor so the action can be noted on the tax duplicate. The auditor's function is to provide notice to the treasurer that a specific portion of a piece of property is exempt from property taxation. The auditor does not have the authority to change a PTABOA determination and instruct the treasurer to apply or not apply an exemption contrary to what the PTABOA determined.

WHAT IF A NOT-FOR-PROFIT FORGETS TO FILE IN AN EVEN NUMBERED YEAR

Before May 16 of any even numbered year the county auditor shall provide the county assessor a list of property by parcel number and taxing district that received an exemption in the immediately preceding year. By July 1 of any even numbered year the county assessor will return the list to the county auditor with notation of the board's action on that year's exemption.

The county assessor by June 16 in any even numbered year shall mail a notice to property owners who received exempt status in the previous year and were required to re-file an application notice that the property will be taxed unless the owner files an application within fifteen (15) days of the notice being mailed. Failure of a county assessor to provide this notice does not result in a continued exemption, but does extend the applicants deadline to re-file the application till the first Monday in November the year following the year they should have re-filed.

DEPARTMENT OF LOCAL GOVERNMENT FINANCE REVIEW

On or before August 1 of each year, the county assessor shall forward copies of all approved exemption applications to the Department. (The code reads that the auditor is supposed to forward the applications, but at no time does the auditor have the applications. The auditor merely receives a copy of the Action by the PTABOA, along with the state.) The Department must review all applications submitted and provide a report to LSA documenting its findings to LSA by August 1. The report must contain the following information.

IC 6-1.1-11-8(c) With respect to the approved applications forwarded under subsection (a), the department shall annually report to the executive director of the legislative services agency:

- (1) the number forwarded;
- (2) the number subjected to field investigation by the department; and
- (3) the number denied by the department;

during the year ending on July 1 of the year. The department must submit the report under this subsection not later than August 1 of the year.

This new statutory provision took effect July 1, 2003, for exemption applications in 2004. Therefore, by August 1, 2004, all counties must forward to the Department complete and accurate copies of all approved exemption applications including supporting documentation. The assessment field staff will be helping the

counties and the Department with gathering this documentation. Until you hear from your field staff representative or receive further instruction from this office, we ask that you hold all applications approved in 2004.

The Department will be adopting rules to govern how it is to review the applications that will include notice of any amendments to the county as well as any necessary appeal rights to the taxpayer.

CONCLUSION

The Department will continue to assist all local officials with complying with these new procedures. If you have any questions or concerns please feel free to contact me at 317-232-5895 or by e-mail hscheel@dlgf.in.gov.